

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

GARY L. NASH
17 Lodgehill Court
Danville, California 94526
Pharmacist License No. RPH 24086

Respondent.

Case No. 3097

OAH No. 2007100215

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 23, 2008.

It is so ORDERED March 24, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER, State Bar No. 141461
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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **GARY L. NASH**
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12 Danville, California 94526

13 Pharmacist License No. RPH 24086

14 Respondent.

Case No. 3097

OAH No. 2007100215

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
17 proceeding that the following matters are true:

18 **PARTIES**

19 1. Virginia Herold (Complainant) is the Executive Officer of the Board of
20 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
21 by Edmund G. Brown Jr., Attorney General of the State of California, by Jonathan D. Cooper,
22 Deputy Attorney General.

23 2. Gary L. Nash (Respondent) is represented in this proceeding by attorney
24 John Cronin, whose address at Fredrickson, Mazeika & Grant, LLP, is 5720 Oberlin Drive, San
25 Diego, CA, 92121-1723.

26 3. On or about August 13, 1965, the Board of Pharmacy issued Pharmacist
27 License No. RPH 24086 to Gary L. Nash (Respondent). The license was in full force and effect
28 at all times relevant to the charges brought in Accusation No. 3097 and will expire on June 30,

1 2009, unless renewed.

2 **JURISDICTION**

3 4. Accusation No. 3097 was filed before the Board of Pharmacy (Board),
4 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
5 and all other statutorily required documents were properly served on Respondent on September
6 17, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
7 Accusation No. 3097 is attached as exhibit A and incorporated herein by reference.

8 **ADVISEMENT AND WAIVERS**

9 5. Respondent has carefully read, fully discussed with counsel, and
10 understands the charges and allegations in Accusation No. 3097. Respondent also has carefully
11 read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of
12 License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
16 the right to present evidence and to testify on his own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
21 each and every right set forth above.

22 **CULPABILITY**

23 8. Respondent understands that the charges and allegations in Accusation
24 Number 3097, if proven at a hearing, constitute cause for imposing discipline upon his
25 Pharmacist License.

26 9. For the purpose of resolving the Accusation without the expense and
27 uncertainty of further proceedings, Respondent hereby gives up his right to contest that cause for
28 discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist License without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the (Board) may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 24086, issued to Respondent Gary L. Nash, is surrendered and accepted by the Board of Pharmacy.

14. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

15. Respondent shall lose all rights and privileges as a pharmacist in

1 California as of the effective date of the Board's Decision and Order.

2 16. Respondent shall cause to be delivered to the Board both his wall and
3 pocket license certificates on or before the effective date of the Decision and Order.

4 17. Respondent may not apply or reapply for, or petition for reinstatement of,
5 any license, permit, or registration from the Board for three (3) years from the effective date of
6 this Decision and Order.

7 18. Respondent understands and agrees that if he ever applies for licensure or
8 petitions for reinstatement in the State of California, the Board shall treat it as a new application
9 for licensure. Respondent must comply with all the laws, regulations and procedures for
10 licensure in effect at the time the application or petition is filed, and all of the charges and
11 allegations contained in Accusation No. 3097 shall be deemed to be true, correct and admitted
12 by Respondent when the Board determines whether to grant or deny the application or petition.

13 19. Should Respondent ever apply or reapply for a new license or certification,
14 or petition for reinstatement of a license, by any other health care licensing agency in the State of
15 California, all of the charges and allegations contained in Accusation, No. 3097 shall be deemed
16 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
17 other proceeding seeking to deny or restrict licensure.

18 20. Respondent shall pay the Board its costs of investigation and enforcement
19 in the amount of \$3,486.75 prior to issuance of a new or reinstated license.

20 ACCEPTANCE

21 I have carefully read the above Stipulated Surrender of License and Order and
22 have fully discussed it with my attorney, John Cronin. I understand the stipulation and the effect
23 it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and
24 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
25 of the Board of Pharmacy.

26 DATED: Feb 4, 2008

27
28 Gary L. Nash
Respondent

1 I have read and fully discussed with Respondent Gary L. Nash the terms and
2 conditions and other matters contained in this Stipulated Surrender of License and Order. I
3 approve its form and content.

4 DATED: Feb 6, 2008

5
6 
7 JOHN CRONIN
Attorney for Respondent

8 ///

9 **ENDORSEMENT**

10 The foregoing Stipulated Surrender of License and Order is hereby respectfully
11 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

12
13 DATED: 2/20/08

14 EDMUND G. BROWN JR., Attorney General
of the State of California

15 FRANK H. PACOE
16 Supervising Deputy Attorney General

17
18 
19 JONATHAN D. COOPER
Deputy Attorney General

20 Attorneys for Complainant
21

22 DOJ Matter ID: SF2007401489
23 40191064.wpd
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Exhibit A

Accusation No. 3097

EDMUND G. BROWN JR., Attorney General
of the State of California
FRANK H. PACOE
Supervising Deputy Attorney General
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Attorneys for Complainant

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Case No. 3097

GARY L. NASH
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Danville, California 94526

OAH No.

A C C U S A T I O N

Pharmacist License No. RPH 24086

Respondent.

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about August 13, 1965, the Board of Pharmacy issued Pharmacist License Number RPH 24086 to Gary L. Nash (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 118, subdivision (b), of the Code provides that the expiration of a
2 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
3 period within which the license may be renewed, restored, reissued or reinstated.

4 5. Section 4300 of the Code states, in pertinent part:

5 “(a) Every license issued may be suspended or revoked.

6 “(b) The board shall discipline the holder of any license issued by the board,
7 whose default has been entered or whose case has been heard by the board and found guilty, by
8 any of the following methods:

9 “(1) Suspending judgment.

10 “(2) Placing him or her upon probation.

11 “(3) Suspending his or her right to practice for a period not exceeding one year.

12 “(4) Revoking his or her license.

13 “(5) Taking any other action in relation to disciplining him or her as the board in
14 its discretion may deem proper.

15 “...”

16 6. Section 4301 of the Code states, in pertinent part:

17 “The board shall take action against any holder of a license who is guilty of
18 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
19 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
20 following:

21 “...”

22 “(f) The commission of any act involving moral turpitude, dishonesty, fraud,
23 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
24 otherwise, and whether the act is a felony or misdemeanor or not.

25 “...”

26 “(h) The administering to oneself, of any controlled substance, or the use of any
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
28 injurious to oneself, to a person holding a license under this chapter, or to any other person or to

the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

“...”

“(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

“...”

“(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

DANGEROUS DRUGS/CONTROLLED SUBSTANCES

7. Section 4021 of the Code states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

8. Section 4022 of the Code states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

“(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.

“(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

9. Section 4060 of the Code states:

“No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, or

1 furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
3 Section 3502.1, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
4 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall
5 not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
6 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, certified nurse-midwife, nurse
7 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
8 and address of the supplier or producer.

9 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician
10 assistant to order his or her own stock of dangerous drugs and devices.”

11 10. California Health and Safety Code, section 11170, states:

12 “No person shall prescribe, administer, or furnish a controlled substance for
13 himself.”

14 11. California Health and Safety Code section 11173, subdivision (a),
15 provides that no person shall obtain or attempt to obtain controlled substances, or procure or
16 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
17 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

18 12. California Health and Safety Code section 11350 states in pertinent part:

19 (a) Except as otherwise provided in this division, every person who possesses (1)
20 any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
21 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
22 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
23 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
24 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
25 licensed to practice in this state, shall be punished by imprisonment in the state prison.

26 (b) Except as otherwise provided in this division, every person who possesses any
27 controlled substance specified in subdivision (e) of Section 11054 shall be punished by
28 imprisonment in the county jail for not more than one year or in the state prison.

“...”

13. California Health and Safety Code Section 11377 states in pertinent part:

(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

“...”

14. **Codeine** is a Schedule II controlled substance as designated by Health and Safety code section 11055(b)(1)(H) and a dangerous drug per Business and Professions Code section 4022.

15. **Darvocet** is the brand name for **Propoxyphene/Acetaminophen**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(c)(2) and a dangerous drug per Business and Professions Code section 4022.

16. **Valium** is the brand name for **Diazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug per Business and Professions Code section 4022.

17. **Vicodin** is the brand name for **Hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and a dangerous drug per Business and Professions Code section 4022.

18. **Klonopin** is a brand name for the drug **Clonazepam**, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(7) and a dangerous drug pursuant to Business and Professions Code Section 4022.

1 19. **Soma** is a dangerous drug pursuant to Business and Professions Code
2 Section 4022.

3 **COST RECOVERY**

4 20. Section 125.3 of the Code states, in pertinent part, that the Board may
5 request the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 **FACTUAL SUMMARY**

9 21. Respondent worked as a Pharmacist at Costco in Livermore, California,
10 from 2002 until 2007.

11 22. Starting shortly after Respondent began to work for Costco and continuing
12 until his employment ended, Respondent stole controlled substances/dangerous drugs from the
13 Costco pharmacy including, but not limited to, Vicodin, Valium, Klonopin, Darvocet, Soma and
14 Codeine. Respondent self-administered as much as 8 - 12 pills of the various medications per
15 day. Respondent did not have prescriptions for these medications.

16 23. On many occasions during his employment at Costco, Respondent worked
17 as a Pharmacist while under the influence of and impaired by these medications.

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Acts of Dishonesty/Moral Turpitude)

20 24. Respondent is subject to disciplinary action under section 4301(f) of the
21 Code in that he committed acts involving moral turpitude, dishonesty, fraud, deceit, or
22 corruption, as set forth above in paragraphs 21-23.

23 **SECOND CAUSE FOR DISCIPLINE**

24 (Dangerous Use of Drugs)

25 25. Respondent is subject to disciplinary action under section 4301(h) of the
26 Code in that he administered to himself and used controlled substances and dangerous drugs in a
27 manner dangerous to himself and in a manner dangerous to the public and in a manner that
28 impaired his ability to conduct with safety his practice as a Pharmacist, as set forth above in

1 paragraphs 21-23.

2 **THIRD CAUSE FOR DISCIPLINE**

3 (Unlawful Possession and Use of Controlled Substances)

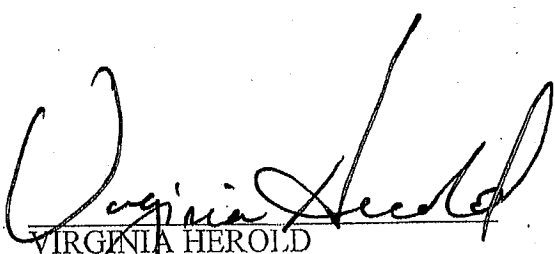
4 26. Respondent is subject to disciplinary action under sections 4301(j) and
5 4301(o) of the Code in that he possessed and used controlled substances and dangerous drugs in
6 violation section of 4060 of the Code and in violation of California Health and Safety Code
7 sections 11170, 11173, 11350 and 11377, as set forth above in paragraphs 21-23.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- 11 1. Revoking or suspending Pharmacist License Number RPH 24086, issued
12 to Gary L. Nash Gary;
- 13 2. Ordering Gary L. Nash to pay the Board of Pharmacy the reasonable costs
14 of the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 9/12/07

19
20 
21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant
27
28